

REA LAW JOURNAL

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RURAL ELECTRIFICATION ADMINISTRATION

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RURAL AMERICA LIGHTS UP

By Harry Slattery

National Home Library Foundation, Washington, D.C.

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Senator Norris says in his introduction to this book: "My interest in rural electrification began nearly twenty years ago during the struggle over who should control Muscle Shoals.....I am proud of REA. It has done great things and will do greater. It is a success. We have had to fight hard in the past, and there is hard fighting ahead, because selfish and powerful interests are opposed to the economic and social benefits which cheap electric energy is bringing to our farm homes. But nothing can prevent the ultimate success of REA."

We admire Senator Norris, the godfather of REA. However, we cannot agree entirely with the last sentence quoted above. There is one thing, but only one, which can prevent the ultimate success of REA. That one thing is indifference, lack of militant concern on the part of the rural people themselves. There is still hard fighting ahead, for the reasons stated so boldly by the Senator. And the American farmers can be indomitable fighters in a cause which they understand and sanction. To help them understand this cause, their own cause, beyond any possibility of hoodwinking, is the sole purpose of this book. And that is why every farmer interested in rural electrification should learn and study and think over the facts which it brings out so dramatically. Learning facts and what they mean is education. The purpose of education in a democracy is for the people to become aware of their

problems. This is the first step toward an intelligent and lasting solution of their problems.

We know of no person better qualified than Harry Slattery to discuss the problem of rural electrification and the struggle behind it. Not only because he is the Administrator of REA, but because he has been in the fight from the very beginning, even before the time referred to by Senator Norris in his opening sentence. Our only regret is that Mr. Slattery's modesty kept him from even indicating the vital part he has himself taken in this struggle to safeguard the people's interests, ever since the time when he first came to Washington as a very young man eager to enlist in the people's cause. The people's cause has not always been a popular cause, and many of its self-appointed champions sooner or later fell by the wayside or capitulated, because they "couldn't take it". Well, Mr. Slattery could and did take it, and this little book proves not only that he is as staunch and vigorous as ever but that he also knows how to "dish it out" without fear or favor.

Despite its easy style, it is difficult to summarize this book in a few paragraphs. It tells so complete a story that a mere recital of the points covered would take several pages. It begins with the futile efforts of the electric industry back in 1910 to do something about getting

electricity to the farmer. It shows why practically no progress has been made in rural electrification after 25 years of dilly-dallying by the utilities. It explains why the big farm organizations finally got disgusted with the utilities which refused to recognize that farmers could not afford electricity unless construction costs and rates were brought down to a sane level. It tells dramatically how REA was born and how it had to fight for its life from the very beginning.

Few farm people who are now getting cheap and reliable service from REA financed lines realize on how many fronts REA and its friends throughout rural America had to labor aggressively and unceasingly before the present achievements became possible. Starting with the legal battles to establish the farmers' right to operate their own electric lines without outside interference, the book highlights the pioneering work of REA engineers in redesigning rural line construction to bring costs down, of REA rate experts in simplifying rate structures and helping to obtain reasonable wholesale energy rates, of REA insurance experts in effecting huge reductions in insurance costs to REA borrowers. It tells of REA's efforts to help the farmers get low cost equipment and appliances of improved quality, of the many advisory services designed to enable these rural electric cooperatives to function not only efficiently but with constantly increasing benefit to farm families and communities.

A most interesting chapter of the book reviews the various ways in which private power companies have attempted, and to some extent are still attempting, to interfere with the REA program and to keep the farmers from making a success of their electric cooperative enterprises. To be forewarned is to be forearmed. REA cooperative members will be better prepared to know how to protect their consumer-controlled, non-profit enterprise

if they are aware of the variety of obstructive tactics that have been used against REA cooperatives at various times and in various places.

The book also touches on the social significance of the REA program for the nation as a whole and for the rural population in particular. It points to the accelerated growth of rural industries as a result of cheap power being made available to rural areas. It stresses the importance of the REA program to national defense, through facilitating the decentralization of industry, through making electricity available for a network of airports and beacons, and in other significant ways. Finally, it looks ahead into the future, visualizing what will come out of this partnership between the farm people and their government in the way of restoring and improving the social and economic standards of rural life, and of building a stronger nation through the intelligent use of the democratic process by the people themselves.

We know of no better cure for indifference on the part of the farm people than to read this little book. It would also be an invigorating tonic for thousands of American men and women who have fought for rural electrification and, having won it for themselves, think the battle is over. In a democracy no battle stays won. Every step in the advancement of human welfare and freedom in our country must be bulwarked by a larger understanding of our problems and by the continued efforts of our people to find the best solution for them.

"Rural America Lights Up" furnishes the facts to inspire farm people with a determination to continue their efforts so there may be no dark spots left in rural America.

Dora B. Haines

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REA LAW JOURNAL

A review of that portion of the law important and interesting to attorneys working in the field of rural electrification.

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Address suggestions and contributions to the Editorial Office, REA, Room 206, 1518 "K" Street, Washington, D. C.

RECENT CASES

Eminent Domain - Measure of damages in condemnation

Plaintiff, State of Texas, condemned a strip of land 100 feet wide across defendant's farm of 125 acres. The strip taken left several acres of cultivated and pasture land severed from the main body of the farm. The Appellate Court in considering plaintiff's objections to the lower tribunal's rulings on the evidence, laid down these criteria for the measure of damages in eminent domain:

The condemnee is entitled to the market value of the condemned strip of land at the time of the taking. The market value of the strip is to be determined by considering it as severed from the rest of the land, since otherwise the strip might gain reflected value from its being a part of the larger whole, which whole may include valuable improvements.

The condemnee, in addition, is entitled to recover the damages to the remainder of his tract of land caused by the taking of a part. The damages, how-

ever, must be peculiar and special to the remainder, over and against those suffered by the rest of the public. But the state may set off against the damage to the remainder of the tract the benefits gained by the remainder caused by the uses to which the state will put the part taken. However, like the damages, these benefits must be peculiar to the remainder of the tract over and against those gained by the general public. Theoretically, all these criteria of the measure of damages to the remainder of the tract are summed up in the formula: The condemnee shall recover the difference in market value of the remainder of the tract before and after the taking. State v. Davis, 140 S.W.(2d) 861 (Texas, 1940)

Injunctions and Declaratory Judgments - Meaning of justifiable controversies

Plaintiff irrigation district maintained extensive water, irrigation and electrical works in a certain territory. Plaintiff sought to enjoin defendant from extending its electrical service in the territory by preventing defendant from crossing plaintiff's properties and lines. Plaintiff alleged that defendant was about to do so without obtaining the necessary easements and other permission. Defendant counter-claimed for a declaratory judgment in which it asked the court to determine, assuming the plaintiff had title to certain lands, whether that title cut off defendant's existing easements over those lands. Plaintiff and defendant had stipulated that the declaratory judgment would not be res judicata on the question whether plaintiff in fact had title to the lands. A declaratory judgment was entered by the lower court as requested. The court also dismissed plaintiff's suit for an injunction without prejudice to plaintiff's rights if, at a later time, it should appear they were threatened. Both parties appealed, defendant not being satisfied with the declaratory judgment and plaintiff with the form of the decree dismissing its suit for an injunction. Held, decree affirmed in part and reversed in

part. Imperial Irr. District v. Nevada-Cal. Electric Corp., 111 Fed. (2d) 319 (C.C.A. 9, 1940)

Plaintiff's appeal was on the theory that the form of the court's decree dismissing its suit for an injunction did not save its rights if defendant in the future actually encroached on plaintiff's rights, but the decree was found not wanting in this respect. However, the lower court should not have entered any declaratory judgment because there was no justifiable controversy - the parties having stipulated that the decree would not determine whether plaintiff had title to certain lands but only whether, if plaintiff had title, what the effect would be on defendant's easements.

Negligence - Liability of motorist for damage to telegraph pole located within the highway

Defendant motorist, while rounding a curve in the highway, drove his car across the center line of the highway and proceeded upon a tangent therewith across the berm on the left side of the road continuing his course over the grass and slope 165 feet to a point where the car collided with plaintiff's telegraph pole, which was broken off near the base.

At the place where the accident occurred, the highway was 70 feet in width, 22.4 feet of which was improved with macadam bordered by a strip of gravel on each side 2 feet in width. Plaintiff's pole was located within the highway. It stood 13 feet from the edge of the macadam pavement, or 11 feet from the improved portion of the highway.

In a suit by the plaintiff telegraph company to recover cost of replacements and repairs, the defendant defended on the ground that section 9170, General Code, which gave plaintiff the right to erect its poles on the highway also provided that in so doing "it shall not incommode the public in the use thereof",

that the pole incommoded him in the use of the road, and that its erection and maintenance was an act of negligence and the proximate cause of the collision, by reason of which even though he was found negligent, plaintiff could not recover because it was guilty of contributory negligence. From a judgment in favor of defendant, plaintiff appealed. Held, judgment reversed, Ohio Postal Telegraph-Cable Co. v. Yant, 28 N.E. (2d) 646 (Ohio 1940).

The court, in laying down the rule for this case, stated:

"When the plaintiff is found to be lawfully using the highway and its pole is not upon or in close proximity to the portion thereof improved and set aside for vehicular travel, and in all common foreseeable probability not an instrumentality liable to injure a traveler, and when, on the other hand, we find a motorist who admits his negligence, or is proven to have been negligent, and who misuses the highway and invades that portion thereof reserved for other lawful purposes, and who by his own carelessness injures the property of another, is, and should be, liable for the damage which he does to such property which is lawfully upon the highway."

Referring to section 9170, General Code, the court said that this Act "contemplates a lawful use of the improved portion of a highway and that portion thereof which is in close proximity to its proper use. This constitutes that portion of the roadway in which the traveling public has a superior right, and in the use of which the public may not be incommoded. Surely, the word 'use' does not include its misuse, which is evident, even as to the improved portion thereof, by our statutes which regulate its use in many respects, of which vehicles with lugs is an excellent illustration. This section of the General Code is not a go sign to the public, but a grant of a right of user to a magnetic telegraph utility, with a restriction upon its accorded privilege to not incommode the public in the lawful use of that portion

of the road provided for public travel."

[Editorial Note]

It appears to be self-evident that the rule laid down in this case would be applicable to electric light poles as well as telegraph poles.

Negligence - Meaning of contributory negligence as a matter of law

Plaintiff was an employee of defendant power company. He and a group of men were engaged in setting electric line poles in holes dug for that purpose. The pole would be lifted at the thin end with a butt acting as fulcrum placed over the hole. Then two crossed poles, called a "jenny", would be placed under the lifted end to support it. The men with pikes would thereupon further raise the uplifted end until the pole would be straight and slide into the hole. Defendant's foreman was supposed to keep the butt of the pole from turning. Plaintiff was manipulating

a pike; he gave it to another employee and started to get another pike in the company's wagon, passing under the pole to do so. The pole fell on him causing an injury. Plaintiff alleged that defendant was negligent in that his foreman did not use the proper tool, a cant hook, to keep the butt of the pole in its place, and in that the other servants should not have moved the "jenny" while he was crossing under the pole. From a judgment entered upon a jury verdict for plaintiff, defendant appealed. Held, judgment affirmed. Arkansas Power and Light Co. v. Dutton, 140 S.W.(2d) 689 (Ark. 1940).

The jury was entitled to find that defendant was negligent. The plaintiff was not contributorily negligent as a matter of law in passing under the pole, since it was reasonable to assume that the pole was in a safe position at the time. Plaintiff did not depart from his work when he sought to get the pike, since this was a necessary part, and within the scope, of his employment.

The jury was divided to find that defendant was negligent. The majority was not sufficiently negligent as a matter of law in passing under the facts, and it was reasonable to believe that the jury was in a better position to decide the facts. Defendant did not testify at the time. Defendant did not testify at the time when he was to put the pipe, and since this was a very heavy pipe, and within the scope of his employment.

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Legal Division Addendum

IMPORTANT DEVELOPMENT IN LAW LIBRARY

The Law Library has recently taken a step of great magnitude. We have begun to fulfill our goal of having a complete working Law Library of our own. In order to attain this objective, as you undoubtedly know, it is necessary that we obtain the State Reporters prior to the Sectional Reports. The first case reports acquired have been the cases in Nevada and Oregon. The volumes containing these cases are now in the Law Library and thus we have the complete law of Nevada and Oregon on our shelves. The Montana Reporters are on order and should be here very shortly. By the gradual acquisition of additional cases from other states we hope some day to have a complete set for all states. If you have noticed that there are any state cases prior to sectional reporters that have particular importance to REA, I should be glad to hear about it.

Albert B. Gerber

Formation of Georgia State-Wide Mobile Generating Cooperatives

A state-wide meeting of Georgia REA cooperatives was held in Atlanta on November 12 and 13 for the purpose of considering, among other things, the advisability of establishing a state-wide power reserve cooperative. The group of representatives, which consisted primarily of Project Superintendents and Directors, voted unanimously to organize such a cooperative. The Power Reserve Cooperative will borrow money from the Government to

purchase four mobile generating units which will be distributed throughout the State in such a fashion that each cooperative will be within 50 miles of one unit in the event of a power breakdown necessitating an emergency source of power.

The problems involved in the formation of the Georgia Cooperative were very similar to those encountered in the incorporation of the recently organized Texas Generating Cooperative and the proposed Pennsylvania State-Wide Cooperative.

Although only one Georgia Project Attorney was present at the meeting, a number of legal questions were raised by Cooperative Representatives. These questions covered a broad range of problems and were not limited to the various matters that were officially discussed. Questions concerning the Tax Unit and the Operations Section, as well as questions involving the State Law Unit were frequently raised.

David Cohon

LEGAL MEMORANDA RECEIVED IN NOVEMBER

- A-386 Sale of electric energy by Miss. cooperative to consumers in Ala. (Miss. 39 Jackson)
- A-387 Validity of conveyances made prior to grantee's incorporation
- A-388 Applicability of Pa. Workmen's Compensation Act to employees of Pa. cooperative erecting lines in Md.

A-389 Liability of cooperatives to employees of independent contractors

A-390 Prohibiting gifts from employees of cooperatives to those in superior positions

A-391 Jurisdiction of SEC and FPC over sale of lines by Florida Power Corporation to Florida cooperative

A-392 Status of an applicant for membership in cooperative prior to acceptance by directors (Ga. 93R Mitchell)

A-393 Necessity of consideration in a conveyance of real property

A-394 Federal Power Comm. jurisdiction over sale of local distribution facilities

A-395 Refiling a deed of trust conveying personalty - Okla.

A-396 Franchises required to operate transmission lines in Iowa municipalities

A-397 Power of municipality to transfer right of way easements to REA cooperatives - Maryville, Tenn.

A-398 Suitability of N.J. State Board of Public Utility Commissioners

A-399 Necessity of stating in the renewal affidavit that mortgage has been pledged to RFC

TAX MEMORANDA RECENTLY RECEIVED

T-282 Exemption of REA cooperatives from the State Unemployment Tax

T-285 Kansas Compensating Tax

T-288 Ad Valorem Property Tax in Idaho

T-290 Constitutionality of statute exempting cooperative from taxation - Kentucky

T-291 Exemption of REA stock cooperatives from Federal Documentary Stamp Tax

T-293 Liability for taxes on acquisitions in Kentucky

T-294 Liability for taxes on acquisitions in Illinois

T-295 Property tax on electric wires and poles in Mass.

T-296 Service tax on attorney's fees in Colorado